

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 5, 2007 Session

CLAUDE L. GLASS v. STATE OF TENNESSEE

**Appeal from the Tennessee Claims Commission
No. T-20070099 William O. Shults, Commissioner**

No. E2007-00930-COA-R3-CV - FILED DECEMBER 19, 2007

In this action to recover child support payments from the State of Tennessee (the “State”), Claude L. Glass, (“Claimant”) filed a claim with the State Division of Claims Administration alleging that the State had miscalculated his child support payments and wrongfully collected money from his wages, federal income tax returns, and rent payments. The Tennessee Claims Commission (the “Commission”) held that the Commission did not have subject matter jurisdiction and dismissed the case. Claimant appeals. We hold that the Commission lacks subject matter jurisdiction for claims to recover alleged excess child support payments, and, therefore, the Commission did not err by dismissing this claim. Affirmed and remanded.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Claims Commission Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Claude L. Glass, Knoxville, Tennessee, *pro se* Appellant.

Robert E. Cooper, Attorney General & Reporter, Michael Moore, Solicitor General, and Heather C. Ross, Senior Counsel, Nashville, Tennessee, for the Appellee, State of Tennessee.

OPINION

I. Background

Claimant was found to be the biological father of a minor girl (“the Child”) by Knox County Juvenile Court in late 1999 or early 2000.¹ Claimant’s child support obligation was calculated, and the State, through its Department of Human Services (“DHS”), issued an Order/Notice to Withhold Income for Child Support. From then on, a portion of Claimant’s paychecks was collected and sent to DHS to satisfy his child support obligation. The amount of Claimant’s child support was modified at least twice by the Juvenile Court, with the last modification increasing his obligation to \$494 per month. In addition to having his wages garnished, DHS also intercepted Claimant’s federal income tax refund numerous times and applied the money toward his child support arrearage.

Claimant asserts that DHS has collected too much child support from his wages and tax refunds. Although the record is unclear, Claimant apparently maintains on appeal that he is not the Child’s father because the Child’s mother was married to another man at the time of the Child’s birth.² Claimant filed a claim with the State Division of Claims Administration seeking a refund of the alleged excess child support paid by him. The State filed a Motion to Dismiss for lack of subject matter jurisdiction, which the Commission granted. Claimant then filed a motion requesting an *en banc* hearing with the entire Commission. The Commission denied the *en banc* request. Claimant appeals.

II. Discussion

Although Claimant presents several issues for our review, the dispositive issue is:

1. Whether the Commission correctly held that it lacked subject matter jurisdiction over Claimant’s claim for recoupment of alleged excess child support.

The Commission’s determination of whether it has subject matter jurisdiction over a claim is a question of law. *Williams v. State*, 139 S.W.3d 308, 311 (Tenn. Ct. App. 2004). We review conclusions of law *de novo* with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The General Assembly has defined the scope of the Commission’s jurisdiction in Tenn. Code

¹The record does not contain the Juvenile Court’s order establishing paternity, although it does contain the Complaint to Establish Parentage, which was filed on October 14, 1999. The parties do not dispute that an order was entered by the Juvenile Court declaring Claimant the Child’s biological father.

²At the time Claimant filed a claim with the State Division of Claims Administration, Claimant also was pursuing a refund of his child support payments in Juvenile Court. The status or outcome of that case, however, is not relevant to the matter before us.

Ann. § 9-8-307(a). Only claims that fall within one of the categories of claims described in that statute will be permitted to proceed. Our Supreme Court has discussed the Commission’s jurisdiction as follows:

While the Claims Commission has exclusive jurisdiction to hear claims arising against the state, this jurisdiction is limited only to those claims specified in Tennessee Code Annotated section 9-8-307(a). If a claim falls outside of the categories specified in section 9-8-307(a), then the state retains its immunity from suit, and a claimant may not seek relief from the state.

Stewart v. State, 33 S.W.3d 785, 790 (Tenn. 2000) (internal citations and footnote omitted).

In a memorandum submitted by Claimant in opposition to the State’s Motion to Dismiss, Claimant asserted that “[t]he Claims Commission has subject matter jurisdiction over claims base [sic] on negligent care, custody or control of personal property by persons in the legal custody of the State.” Although Claimant cites to a different statute as support for this jurisdictional argument, we believe the correct statute relied on by Claimant is Tenn. Code Ann. § 9-8-307(a)(1)(F), which provides as follows:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

* * *

(F) Negligent care, custody or control of personal property

This Court previously has considered the issue of whether Tenn. Code Ann. § 9-8-307(a)(1)(F) confers jurisdiction to the Commission to adjudicate a claim to recover child support payments. In *Fossett v. State*, No. 02A01-9703-BC-00061, 1997 WL 714877 (Tenn. Ct. App., Nov. 18, 1997), the plaintiff filed a claim for reimbursement of child support payments made for two children after a juvenile court found that he was not the children’s father. *Fossett*, 1997 WL 714877, at *1. The plaintiff relied on Tenn. Code Ann. § 9-8-307(a)(1)(F) as the basis for the Commission’s jurisdiction. *Id.* at *2. The Commission dismissed the plaintiff’s claim, holding that it lacked jurisdiction to hear the case. On appeal, we affirmed the dismissal, stating as follows:

In reviewing Section 9-8-307(a)(1)(F), it is clear that the State’s conduct did not constitute the “care,” “custody,” or “control” of “personal property.” Therefore, the Commission correctly concluded that it lacked jurisdiction over the plaintiff’s claim.

Id. Our holding in *Fossett* dictates the outcome in this case. Claimant here also seeks to recover

child support payments from the State and has offered the same basis for jurisdiction as Mr. Fossett did in his case. Further support for our conclusion that the Commission has no jurisdiction to adjudicate claims for reimbursement of child support payments can be found in Tenn. Code Ann. § 36-5-101(a)(7), which provides as follows:

(7) The State of Tennessee, its officers, employees, agents or contractors, any counties, county officials, the clerks of any court, or any Title IV-D child support enforcement agency shall not be liable, in any case, to compensate any person for repayment of child support paid or for any other costs, as a result of the rescission pursuant to § 24-7-113 of any voluntary acknowledgment, or the rescission of any orders of legitimation, paternity, or support.

Tenn. Code Ann. § 36-5-101(a)(7). The General Assembly has made the public policy decision not to waive the State's immunity from suit for any action to recover child support payments. Even though Claimant is not seeking reimbursement following the rescission of a voluntary acknowledgment of paternity or the rescission of a court order regarding legitimation, paternity, or support, we find that this statute applies equally well to Claimant's circumstances. If the General Assembly does not permit a lawsuit for recovery of child support payments when the payor has been legally relieved of his or her obligation to support a child, then we are certain that the General Assembly has not waived the State's immunity so as to allow such a lawsuit by a person who still is identified as the legal father and who still is subject to a court order to pay child support.

For all of the reasons above, we find that the Commission correctly concluded that it did not have subject matter jurisdiction over Claimant's claim for a refund of his alleged excess child support payments.

III. Conclusion

After careful review, we affirm the Commission's dismissal of Claimant's claim for lack of subject matter jurisdiction and remand for collection of costs. Costs on appeal are taxed against the Appellant, Claude L. Glass, and his surety, if any.

D. MICHAEL SWINEY, JUDGE